



Generally Speaking

Comings and Goings

Welcome to the Anchorage offices, Paralegal **Nicole Hillstrom** (Human Services Section), **David Baily**, Microcomputer Network Specialist, and LOAs **Corinne Rowland** and **Pamela McDowell**, (Child Protection Section).

Stefan Estonilo transferred from the Torts and Workers' Compensation Section to the Opinion, Appeals and Ethics Section as the LOA I.

Congratulations to **Natalie Lawrence** on her promotion to a Paralegal I in the Child Protection Section, and **Angela Ramos**, promoted to an Administrative Clerk III in the Collections and Support Section.

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The Fairbanks DAO said goodbye this month to **ADA Darren Watts** (who is relocating to Utah), and **ADA Frank Spaulding**. **ADA Joe Dallaire** was welcomed back to the office. He had previously worked as a summer intern before finishing law school. He recently completed a clerkship with Superior Court Judge Olsen in Fairbanks.

The Child Protection Section bid farewell to **AAG Mitch Wyatt**, and **AAG Caitlin Shortell**, who accepted a Medicaid subrogation/recovery position in the Human Services Section.

The Labor and State Affairs Section welcomed legal intern **Ralph Hua**, who just finished his first year of law school at Seattle University. On May 29 the section was delighted to welcome **Krista Stearns**. **AAG Stearns** will handle a variety of responsibilities, including motor vehicle license revocations and workers' compensation appeals.

CIVIL DIVISION

Child Protection

New CINA cases based upon allegations in OCS petitions:

A four-year-old girl was reported to be unattended in a parking lot. When police responded, the mother and her companions appeared to be high. The mother and child were homeless and had been residing in their car for two weeks. The child had a bruise she claimed was inflicted by her mother. The mother has an extensive prior history with OCS. OCS assumed emergency custody.

A 15-month-old baby was brought to OCS by an unrelated caregiver. That individual had been providing care for the infant with no contact from the mother. The child had severe diaper rash and was taken to ANMC for treatment. When contacted, the mother indicated she had trouble dealing with the child so she left her with other

people. The mother has a history of prior reports with OCS and an untreated mental illness. OCS had been working with the mother to rectify the situation prior to removal, but she was non-compliant with the recommended services. The legal father to the infant could not be located. The biological father was not a placement option due to drug issues and domestic violence concerns. As a result, OCS assumed emergency custody.

OCS assumed emergency custody of 14-year-old twin girls, after their mother and stepfather left them alone for six days. When contacted, the parents had no plans to return home. The children were found living in an abandoned house. The children had negative interactions with law enforcement for fighting and vandalism in the recent past. The father's whereabouts are unknown. OCS had previous reports of lack of supervision of the children. The children's mother failed to follow OCS's care and safety plan to arrange to care for her children.

A mother gave birth to a baby exposed to cocaine and opiates. The mother tested positive for drugs during her pregnancy. OCS attempted to create a care and safety plan, but the father refused to cooperate. Both parents have a history of drug use. Because OCS could not establish safety, emergency custody was assumed.

APD responded to a hotel where they found a mother too intoxicated to care for her two children. The father was aware of the drinking, but had not taken steps to protect the children. The children were taken into custody.

A mother was admitted to the hospital after she collapsed. She tested positive for opiates and could not explain the reason for the positive result. The mother has a history with OCS and has had prior mental health problems. As the father is deceased and no relatives were available to care for the child, OCS was forced to take emergency custody.

Numerous children were taken into custody as a result of serious risk of harm due to their parents' substance abuse and domestic violence.

Activities

AAG Timna Sites attended a joint spring conference between the ABA YLD and the Young Bar Association of Montréal as a district representative for the young lawyers of Alaska (and Hawaii).

Commercial and Fair Business

Court Approves Lithia Settlement

In a heavily contested battle over a consumer protection settlement with Lithia, Judge Jack Smith signed a consent judgment between the state and all Alaska Lithia auto dealers that will provide significant consumer restitution, injunctive relief, and civil penalties. Opponents of the settlement are class action plaintiffs who filed an action against Lithia for the same violations resolved in the settlement. The plaintiffs fear the settlement will impair their ability to collect treble damages and class counsel attorneys fees in their case. The judge was not persuaded. Lithia paid the state \$500,000 in penalties.

Stanley Motors Agrees to Fine, AVC

Stanley Motors, who operates as Budget Car Sales, agreed to a suspended \$15,000 penalty for violations of Alaska's Motor Vehicle Dealer Act. Stanley ran advertisements for an "Invoice Sale" claiming it was selling vehicles at or below factory invoice prices. Alaska law prohibits auto dealers from using the term "invoice" in advertisements because it is deceptive. Dealers rarely pay a manufacturer the actual invoice price for a vehicle because they receive incentives and bonuses. The penalty in this case was suspended for two years on condition that Stanley comply with this and other advertising restrictions.

ALJ Proposes Sanctions Against Ketchikan Appraiser

On May 24, following a hearing on December 8-9, 2005 and February 27, 2006, Administrative Law Judge ("ALJ") James Stanley issued a proposed decision recommending that the Board of Certified Real Estate Appraisers ("Board") impose disciplinary sanctions against Ketchikan real estate appraiser Kim Wold based on his multiple violations of the Uniform Standards of Professional Appraisal Practice ("USPAP"), a federally mandated standard of practice for appraisers, in three separate appraisals.

Based on an accusation filed by the Division of Corporations, Business and Professional Licensing ("Division"), the ALJ found that with regard to a marina appraisal, Wold's use of the cost approach was improper because the marina was old and there was insufficient data to measure depreciation (use of the cost approach on older properties is difficult because of the high depreciation involved). This conduct violated the USPAP provision requiring the use of recognized methods and techniques necessary to produce a credible appraisal. Additionally, Wold made an improper double deduction for depreciation and functional obsolescence, which violated another USPAP provision prohibiting a "substantial error" that "significantly affects an appraisal."

With regard to a residential appraisal, the ALJ found that Wold used comparable sales that all required unreasonably high downward adjustments, which violated the same USPAP provision prohibiting a "substantial error." If better comparable properties were unavailable, Wold needed to explain and justify that in his report. Wold also "blithely" relied solely on a contractor's estimate to fix a sagging floor to further reduce his original value another 23 percent, which violated a USPAP provision prohibiting the rendering of appraisal services in "a careless or negligent manner."

In Wold's third appraisal, a luxury residential property with access issues, the ALJ found that

Wold's use of the cost approach was improper because it was undisputed that with residential properties the sales comparison approach produces the most accurate results and Wold's failure to exhaust the search for comparable high-end properties violated the USPAP requirement that the appraiser employ recognized methods and techniques necessary to produce a credible appraisal. Because Wold should have examined the sales of all high-end residential properties in Southeast Alaska, he also violated the USPAP provisions prohibiting both "a substantial error or omission" and the rendering of careless or negligent services by an appraiser. Wold also violated a USPAP provision requiring an appraiser to adequately explain his departure from the usual valuation approaches.

Thus, the ALJ concluded that the division met its burden of establishing a basis for discipline as a result of Wold's violations of AS 08.87.200(1) (acting negligently or incompetently or failing without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal) and AS 08.87.200(3) (failing to comply with USPAP). Based on the eight USPAP violations described above, the ALJ recommended to the Board that Wold be reprimanded, that he be required to successfully complete a 15 hour USPAP course within 12 months, and that he pay a fine of \$2500 within 12 months (to be reduced to \$1500 if the USPAP courses are completed within 12 months). The board has not yet scheduled a meeting to consider the proposed decision. AAG Robert Auth represented the Division in this proceeding.

Human Services

Litigation Update

The section received a recommended decision in the South Anchorage Ambulatory Surgical Center appeal from the ALJ, from a hearing that was held last August. The decision affirms that the

agency made the right decision at the time of the application, but after further evidence was presented and alternative theories proposed at the hearing, the decision concludes that a new determination should issue. Specifically, the ALJ recommends that four surgery suites be approved with two suites shelved in for future use. The parties have until June 6, 2007 to file responses to this proposed decision.

In other Certificate of Need litigation, Dr. Bridges filed a case in superior court against DHSS Commissioner Jackson. The allegations in the complaint are being closely considered. The next court hearing is scheduled for June 26, 2007.

On a somewhat related matter, Dr. Bridges and Alaska Open Imaging have filed their appeals of Judge Steinkruger's earlier decision enjoining AOIC from operating its Fairbanks office. No briefing schedule has been issued.

In another CON related case, the Supreme Court requested additional briefing on a legal issue in the appeal brought by Paul Fuhs.

Peace Health who run the Ketchikan and Sitka hospital are dismissing their complaints related to how the Disproportionate Share Program is administered. Peace Health reached this conclusion after the funding issues were explained in detail to their attorney.

Medicaid

Subrogation/Liens

During the month of May the Medicaid subrogation team has collected \$93,087.75 as a result of 15 case resolutions. The total amount collected to date for calendar year 2007 is now \$547,635.17. The current "inventory" of open matters is 711 and the resolution of 756 matters has been tracked.

Medicaid Audits

AAG Rebecca Polizzotto continues to work on the Medicaid Audit appeals and has been successful

in resolving a number of them. She filed a brief in one of the cases which will have some impact on others, especially related to the department's practice of extrapolating findings over statistical samples.

Agency Advice

The section continues to advise the Department of day to-day issues mainly related to Personal Care. AAGs Robin Fowler and Nevhiz Calik are handling most of this work.

Other

Senior Care

Section Chief Stacie Kraly is working on emergency regulations for the Department of Health and Social Services, at the behest of the Governor, to extend the Senior Care program that failed to pass both houses before the session ended in May. The program is set to sunset on July 1, 2007, and the Governor wants to continue the program through General Relief until the issues is resolved by the legislature. The regulations should be ready for adoption soon.

Labor and State Affairs

Education

The superior court granted AAG Neil Slotnick's motion to dismiss a complaint against the state by the Disability Law Center involving a special education child. The basis for dismissal was the failure to exhaust administrative remedies.

Elections

Judge Joannides on May 15 granted the state's motion for summary judgment in *Green Party v. SOA, Div. Elections ("Green Party 3")*. This is the last of three cases in which the Green Party has challenged the standard for maintaining official political party status under AS 15.60.010(25). To maintain political party status, a party must

demonstrate support, which under AS 15.60.010(25) requires affiliation with a candidate receiving 3 percent of the votes cast in a statewide race. The race is the race for governor, if there is a gubernatorial election; for U.S. Senate, if there is no gubernatorial election; or for the House of Representatives, if there is neither a gubernatorial nor Senate race. The court found the statute to be constitutional, relying on the Alaska Supreme Court's recent decision in *Green Party 2*, 147 P.3d 728 (Alaska 2006). The court reasoned that the requirement promoted the state's interest in ensuring that political parties possess support without interfering significantly with constitutionally protected ballot access. AAG Sarah Felix represented the state.

Employment

On May 10, the Alaska Labor Relations Agency issued its decision in *Alaska Correctional Officers v. State*, in which a union maintained that the state had a duty to bargain with it over retirement benefits. The Agency agreed with the state that such benefits are not a mandatory subject of bargaining but concluded that, even if they were, the union waived negotiations by failing to make a timely demand to negotiate. The union delayed its demand for bargaining until after the parties reached agreement even though the statutory changes to retirement benefits that it wanted to negotiate were signed into law before then. AAG Bill Milks represented the state.

On May 13, AAG Milks argued *Baseden v. SOA* before the Alaska Supreme Court. In that case a former state employee, who had been dismissed, is seeking to set aside two labor arbitrations denying him reinstatement to state employment and some of the damages he demanded. The remedies were denied because the grievant unreasonably failed to return to work after the state made an unconditional offer of employment.

DeNardo v. State. After a motion filed by AAG Bill Milks, the superior court dismissed a complaint that Daniel DeNardo filed against a number of employees at the Division of Petroleum

Revenue after he was passed over for employment in that division. The reasons for the court's action were (1) age claims should be brought exclusively under the ADEA; (2) state employees would not be individually liable under a Bivens-type action for breach of a constitutional violation *even if* Alaska were to recognize such an action, and (3) claims concerning veteran's preference points and employment records must first be brought administratively.

Motor Vehicles

Alvarez v State, DMV. The superior court affirmed the revocation of Sonja Alvarez's driver's license, holding that the right to an in-person hearing established in *Whitesides* does not extend to a right to have the arresting officer appear in person; and that a 31-month delay between arrest and hearing decision does not constitute a due process violation when the delay is a result of the driver's demand to cross-examine the arresting officer. AAG Margaret Paton-Walsh represented DMV.

Office of Rate Review

AAG Linda Kesterson worked with the staff of the Office of Rate Review to settle an appeal by Charter North/North Star Hospital of its FY 2001 Medicaid rate. This appeal is one of two remaining appeals under a rate system that was the source of much litigation and which was replaced in December 2000. The state and the facility had settled the dispute in 1998 but then disagreed about the impact of the settlement on the rates applying to subsequent years. For FY 2001 the state had refunded to the facility the amount that it calculated had been overpaid to it (\$67,190) but the facility challenged the calculations and claimed a further refund. The state has agreed to refund an additional \$507,484 to North Star in complete settlement of the case.

Legislation and Regulations

During May, the Legislation and Regulations Section spent an active month reviewing legislation and amendments for the 2007 regular session of the Alaska State Legislature. The Legislature adjourned May 16, 2007. The section also edited several administrative orders for consideration by the governor. The section additionally edited several bill reviews for legal issues on bills pending before the governor for action.

Regulations projects reviewed in the section during May 2007 include:

1. Department of Natural Resources (forest practices in riparian areas; anadromous waters atlas and catalog);
2. Regulatory Commission of Alaska (provisional certification for small water and wastewater utilities);
3. Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing (fees);
4. Department of Commerce, Community, and Economic Development, Big Game Commercial Services Board (licensure, examinations, and registration);
5. Alaska Commission on Postsecondary Education (parent and student loans);
6. Board of Fisheries (Arctic-Yukon-Kuskokwim Regional Yukon-Northern Area personal use, sport, and commercial finfish fisheries; Bristol Bay Area commercial finfish fisheries Ugashik District description; Arctic-Yukon-Kuskokwim regional finfish fisheries; Kotzebue, Norton Sound-Port Clarence Yukon-Northern, Kuskokwim, and Bering Sea-Kotzebue area);
- and 7. Department of Health and Social Services (Medicaid eligibility; home and community-based waiver service rate freeze).

Natural Resources

BAC Meeting

On May 17 AAG Tina Otto attended the Board of Agriculture and Conservation meeting. Among other things, the board heard public comment

regarding the continued operation of the Creamery Corporation dba Matanuska Maid Dairy.

Federal Subsistence Board

In meetings on May 2 and May 8-9, the Federal Subsistence Board (Board) declined to change its prior determination granting Ninilchik (including Happy Valley) a subsistence priority to all salmon and resident species fish for the Kenai River, Russian River, Kasilof River and other waters throughout the Kenai National Wildlife Refuge and Chugach National Forest. Although three members of the six-member board tried to limit their previous priority determination for Ninilchik and Happy Valley outside of the Kasilof River area to salmon only, they were informed by their legal counsel they could not do so without four votes. In response, those three members defeated all proposals for the actual harvest of rainbow trout and other resident species by Ninilchik and Happy Valley residents within the Kenai/Russian Rivers area and waters north, including Kenai and Skilak Lakes and the Swanson River area. They also defeated the proposal for the direct harvest of steelhead/rainbow trout from the Kasilof River drainage.

The proposed directed subsistence harvest of those species raised significant conservation concerns. The board also rejected proposals for the use of gillnets on the Kenai and Kasilof Rivers. It approved the harvest, mostly of salmon, by rod and reel and also by dip net in specified locations, including the Russian River Falls area which is off-limits to other fishing. Hope and Cooper Landing, which only have a priority to the Kenai River area and were not the chief proponents for these fisheries, are not expected to engage heavily in them.

Other federal subsistence items included assisting ADF&G with filing four requests for reconsideration and attending the board's annual wildlife meetings April 30 – May 2. Significant actions taken by the board at those meetings included rejection of an ADF&G proposal to constrain commercial sales

of bear claw handicrafts and board creation of new customary and traditional (priority) use determinations and hunting seasons for Ninilchik for brown and black bear on the Kenai Peninsula, despite the fact that documented Ninilchik harvest levels over more than three decades demonstrate extremely low to nonexistent harvest with almost no harvest from areas where federal public lands exist. ADF&G protested that those determinations violate the board's own regulations. AAGs Steven Daugherty and Mike Sewright provide assistance to ADF&G on these matters.

FRWR Litigation

In the consolidated *Katie John v. U.S./State v. Norton* federal reserved water rights (FRWR) case an order was received on phase I of the litigation on May 17. In that case, the section is working with outside counsel, Bill Horn, challenging both the process the federal government used to assert FRWR (regulation rather than adjudication) and the geographic extent of the rights it claims. The state's claims include assertions that the federal government is impermissibly seeking to over-extend its subsistence jurisdiction, in violation of the state's sovereign rights, by extending its FRWR claims into marine and tidal waters, rivers and lakes adjacent to but outside of federal boundaries, and inland waters surrounded by state, private, or selected lands. The court's order found that FRWR may be asserted by federal regulation.

However, the court agreed with the state that the federal government may not conclusively determine FRWR by regulation. The court found that the federal regulations do nothing more than "list federal reservations in which the federal government claims to have by implication reserved water for purposes of ANILCA." Phase II of the litigation will address whether the government has been over-expansive in its allegations of FRWR or under-expansive as other parties claim.

Hobbs v. State, TLO and DNR. This action was brought by a prospective bidder, Hobbs, at a coal lease sale held by the Trust Land Office for

mental health trust lands near Chickaloon. Hobbs claimed that the public notice of the lease sale did not satisfy the statutory or regulatory requirements and, therefore, the lease sale and the lease issued to the successful bidder were invalid. After cross motions for summary judgment were completely briefed, the successful bidder for the leases, Full Metal Minerals, Inc., invoked a provision of the lease allowing it to surrender the lease in full upon 90 days notice. The surrender rendered the case moot, and it was dismissed by stipulation before any issues were decided. AAG Colleen Moore represented the TLO in this case.

Opinions, Appeals and Ethics

Before ending its regular session, the legislature adopted a comprehensive ethics and disclosure reform bill. From start to finish, the section monitored the progress of that bill and other bills proposing similar changes. The section also testified at legislative committee hearings and answered legislators' questions about the various bills. The section is very pleased that the bill includes, with only slight modifications, all of the elements Governor Palin originally proposed in her bill.

Regulatory Affairs and Public Advocacy

New Cases

RCA/U-07-30, Evercom. This case arose from an inmate's complaint that Evercom Systems, Inc. violated its tariff in provisioning long distance telephone service to correctional facilities within Alaska. In particular, inmate Frank Olson complained that Evercom was blocking the receipt of collect calls from correctional centers absent prepayment. The RCA requested the participation in the proceeding of both the AG/public advocate and the Dept. of Corrections. RAPA filed a Notice of Election to Participate on April 26, 2007. A procedural schedule has not yet been set.

RCA/U-07-32-36, APES commercial deregulation.

Alaska Pacific Environmental Services d/b/a Alaska Waste (APES) petitioned the RCA for an exemption from economic regulation of its *commercial* refuse collection services in five different geographic service areas throughout the Railbelt. Even if granted, APES would remain fully regulated for the purposes of *residential* service, thus raising questions about cross-subsidization. In response to RCA invitation, RAPA filed a Notice of Election to Participate in the proceeding on May 18, 2007. Adjudicatory hearing dates have been scheduled throughout October in various locations.

Public Advocate Utility Analyst (PAUA)

Reclassification. RAPA concluded a year-long reclassification study effort with the Division of Personnel, effective May 1, 2007. As a result, a new job class series has been established and individual position allocations have been implemented for RAPA (non-attorney) expert analysts. Their new job class is entitled Public Advocate Utility Analyst (PAUA) and the positions have been assigned new job class codes with increased range assignments. The positions remain in the classified service. The reclassification completed another major step in implementing and developing the attorney general's new public advocacy function and fully integrating non-attorney section members into the Department of Law.

Torts and Workers' Compensation

The Alaska Supreme Court heard oral argument on May 16 in the case of *Glover v. AMHS* which raised numerous constitutional challenges to a state law enacted in 2003. This law retains the state's sovereign immunity for workplace injury claims of state employed seamen, and provides for workers' compensation instead of maritime remedies such as maintenance and cure or litigation under the Jones Act. In January 2006 Superior Court Judge Patricia Collins ruled in the state's favor on cross-motions for summary

judgment, upholding the statute, and the plaintiff appealed. The state cross-appealed from the court's order awarding a reduced amount of attorney's fees (\$1,000 instead of the presumptive Rule 82 amount of \$13,000). AAG Susan Cox handled this case from its inception (and handled the legislative bill enacting the change), and argued the appeal.

In a second case before the Supreme Court, *Patrick v. Eric Spitzer and State of Alaska*, the Court heard oral argument relating to a qualified immunity defense and other trial issues in a case that went to trial in Bethel in 2004. AAG Dale House represented defendants at trial and at oral argument.

CRIMINAL DIVISION

Anchorage DAO

During the month of May, ADA Sharon Marshall, finished the bench trial of Cynthia Lord, who was convicted of murdering her three sons, ages 16, 18 and 19. The well-planned murder occurred over a thirteen hour period, during which Lord killed each son individually and then hid the body so she would be able to kill all three. Lord, who had been diagnosed with schizoaffective disorder/depression since age 20, was delusional from discontinuing her prescription medicine. According to Lord, she believed that evil was taking over her children and would turn them into clones and/or robots. The defense argued that Lord should be found not guilty by reason of insanity, presented expert testimony from a Washington state expert, Dr. Bruce Gage, in support of her claim. The state responded by calling Dr. David Sperbeck, an Alaska-based psychological expert, particularly well versed in the Alaska insanity law. In finding Lord guilty but mentally ill, Judge Volland rejected Dr. Gage's interpretation of "appreciating the nature and quality of her conduct" and accepted Dr. Sperbeck's. Lord's sentencing is scheduled for August.

ADAs John Skidmore and Gustaf Olson finished the trial of Dewayne West. West, the last of four co-defendants, was convicted of six counts of robbery in the first degree and seven counts of assault in the third degree for his participation in a home-invasion robbery on December 24, 2005. On that night, during a Christmas party with a number of 17-27-year-old guests, West and three co-defendants robbed several of the party-goers at gunpoint, talking wallets, keys, purses, a TV, CDs, X-box games and some Christmas gifts. As they left, West fired a shot back into the residence. The defense claimed that West lacked the intent to rob anyone, the jury disagreed.

ADA Rob Henderson secured the conviction of Lindsey Crumpton, a known gang "associate," for being a felon in possession of a concealable firearm. Crumpton was contacted by police during a traffic stop of a gang member's car. During the traffic stop, officers found a loaded 9mm Ruger pistol in the map pocket of the front passenger door. Crumpton, who was sitting in the front passenger seat, admitted that he owned the gun for "protection." At trial, Crumpton denied making such admissions (the interview was not recorded). Crumpton, who had been adjudicated a delinquent minor for a felony in 2004, faced one count of misconduct involving weapons in the third degree. The jury convicted, giving Crumpton his first felony conviction as an adult.

ADA Dan Shorey prosecuted William Eisenhuth for vehicle theft and misconduct involving a controlled substance in the fourth degree. In that case, APD Officer Witte, on routine patrol, pulled a green Ford Taurus over that APSIN indicated was stolen. Eisenhuth had rented the car for one day, listing a false address, and never returned the car. Officer Witte found a small baggie of methamphetamine next to a hollowed-out pen in the driver's side door and a single 80 mg Oxycontin pill in the center console and morphine in the trunk. Officer Witte answered Eisenhuth's ringing cell phone and the caller asked him to deliver him a "40" of methamphetamine. Initially,

both Eisenhuth and his passenger denied any involvement with the drugs in the car. However, later the passenger eventually admitted that Eisenhuth was going to sell the Oxycontin pill. Eisenhuth was convicted of a lesser included vehicle theft in the second degree and the jury hung on the misconduct involving a controlled substance in the fourth degree count.

[Fairbanks DAO](#)

Once again the office is on track to receive 80 plus DUI cases. As of May 24, the office received 74 new misdemeanor DUI cases and five new felony DUI cases. The misdemeanor unit has kept busy this month with new cases. Through May 24, the unit has received 258 new referrals. The unit has also been busy with multiple trials.

The grand jury returned 30 indictments. In two companion cases, the grand jury returned indictments for hindering prosecution, tampering with evidence and murder in the first degree. The case arose out of the murder of a Fairbanks resident in January of this year and investigation of that crime.

In an odd case, a woman confronted the mechanic who had repaired her vehicle because she thought he had removed parts from her vehicle. The woman decided to confront the mechanic in front of several witnesses. Despite being told that all the parts were still on the vehicle and that the engine appeared different because it had been cleaned, the woman retrieved a .357 revolver, screamed that she should kill the mechanic and his family, pointed the gun at him, then pointed the gun at the mechanic's truck and fired striking it in the radiator. She was charged with tampering with evidence after telling troopers she did fire the gun at the truck and that she threw the gun into a creek.

Juneau DAO

State v. Coday, a first degree murder trial, began in Juneau on May 7, before Judge Thompson. Coday, traveling from Vegas, arrived in Juneau on August 2, 2006. Shortly after his arrival, he stopped at Rayco Sales (a local gun store), and obtained a Ruger 10-22. He left with the weapon while a clerk was assisting another customer and without filling out the proper documentation. He did, however, leave two \$100 bills on the counter. On August 4, 2006, outside the local Fred Meyer store, Coday took the life of Simone Kim by shooting him with the newly purchased Ruger 10-22 that he had altered by sawing off the barrel and stock. There has been no evidence linking the defendant to the victim. The victim was in Juneau on contract from Anchorage, hired to paint the newly remodeled Fred Meyer. Coday was charged with murder in the first degree, and misconduct involving a weapon in the third degree, for altering the rifle. The jury, after deliberating for two days, convicted him of all charges. Sentencing is set in August.

The day after Jason Coday was convicted, the defendant in a manslaughter case, plead guilty to criminally negligent homicide. David Alex and his co-defendant Stephanie Smathers were charged with manslaughter in the August 2005 death of Jody Watson. Watson was killed by a minivan being driven by David Alex. Alex and Smathers were fighting in the van when the accident occurred. Smathers plead guilty several months ago, and agreed to testify against Alex. Sentencing is set for October.

Kenai DAO

The best thing that happened this month at the Kenai DA's Office is that the office's newest ADA Devoron Hill passed the bar. Dev had been an attorney in civil practice in California for 22 years and had decided that she wanted to fulfill her dream of moving to Alaska. The office is very

proud of her for working and studying full time, and getting it all done.

It's been a month for DUIs on the Peninsula. One week alone there were five felony DUI arrests. In Anchor Point, over Memorial Weekend, there were no felony DUIs, but there were lots of misdemeanor DUIs and other alcohol-related crimes. On a positive note, there were no felonies that weekend, no fatalities, and not even any serious collisions. The "Trooper Presence" was something to behold.

A judge made a really questionable decision in a felony assault trial. The evidence showed that the defendant punched the victim thirty times in the face resulting in a significant amount of blood. He then strangled her and when the officers arrived his hands were still around her throat. One officer testified he thought the defendant was going to kill her because he didn't even acknowledge their arrival, being so focused on the strangulation. The officers had to pull him off of her. The ER doctor testified she could have suffered serious physical injury and treated her accordingly. The judge then granted a motion for judgment of acquittal on all the felony assault counts, ruling that hands are not a dangerous instrument. All the jurors contacted afterward said they would have convicted on all the felony counts.

Kodiak DAO

A 25-year-old man visiting from California was convicted of attempted sexual assault in the second degree for a February attack in which the victim outwitted the intoxicated defendant by feigning to need to go to the bathroom before the attack could be completed. The defendant was sentenced to 15 years incarceration with six years suspended and was placed on probation for seven years following his release from prison. He was also ordered to undergo a substance abuse program and to complete any treatment required, as well as to totally refrain from the consumption or possession of any alcohol during

his period of probation. He was also ordered to undergo a mental health evaluation and to complete treatment as required, including sex offender programming, and is to register as a sexual offender for at least the next 26 years.

A 47-year-old Kodiak man was indicted for tampering with physical evidence after his probation officer caught him using a rather sophisticated fake penis to submit a false urine sample when his probation officer called him in for a random urinalysis. (For the truly curious, see "whizzinator.com" for more information). Without use of this device, a true urine sample came back positive for cocaine, methamphetamine and marijuana (referred to in the trade as "the trifecta"). By using the whizzinator, not only did this three-time felon fail to save himself from the possible imposition of his four-year suspended sentence, but he additionally placed himself squarely in the cross hairs of the new tampering felony for which he will be presumptive 3-5 years as a third felony offender. An August trial date is pending.

A family pharmaceutical business came to an abrupt end when members of the Kodiak Police Department served a search warrant on the home of a 48-year-old man, his 47-year-old wife, and their 19-year-old daughter. All were indicted for multiple counts of misconduct involving a controlled substance in the third degree for not only the cocaine and methamphetamine that was found in the search warrant service, but also for multiple controlled buys into the residence by an undercover operative working with the police department. During one controlled buy the daughter took the buy-money, gave it to her father, and the mother delivered the drugs. During the search warrant service multiple cellophane-sealed envelopes containing \$10,000 cash each were recovered, as well as multiple loaded weapons in addition to the drugs. A July trial date is pending.

[Nome/Kotzebue DAO](#)

In Nome, Shawn Pushruk was sentenced to five years in prison with two suspended following his conviction for assault second degree. Last year, Pushruk, drunk and wielding a meat cleaver, had ran amok in the village of Teller, terrifying villagers and stabbing at least one chained up husky. Pushruk eventually made his way to the village school, where he came across a phone technician just up from Anchorage, and whacked him across the back with the cleaver.

In Kotzebue, Tami Stevens entered her no-contest plea to misconduct involving a controlled substance IV for possession of cocaine. Last winter Stevens was at the Kotzebue jail following her arrest for dealing drugs out of her trailer when a search of her brassiere yielded the narcotic. Sentencing is set for August.

[Palmer DAO](#)

The Palmer DAO is proud to announce ADA Robert Campbell passed the Alaska Bar examination and is the office's newest ADA.

Kira Gray is currently on trial for kidnapping and murder in the first degree for her role in the shooting of Terrell Houniges in May of 2005. The trial is anticipated to take several weeks. Her co-defendant Mario Page was convicted at trial of murder in the second degree in February. The trial prosecutors are DA Roman Kalytiak and ADA Jon-Marc Peterson.

A Valdez jury convicted James Gallagher of driving under the influence. At trial, the defense challenged the datamaster result. ADA Jarom Bangerter prosecuted this case.

Palmer Juries

John Wysong was convicted of refusal to submit to a chemical test. ADA Michael Perry tried this case.

Erica Hill was convicted of driving under the influence. At trial, the defense called two experts to challenge the datamaster result. ADA Michael Perry prosecuted the case for the state.

Ian Gallagher was convicted of driving under the influence. At trial, the defense argued a driver identity issue. The trial prosecutor was ADA Robert Campbell.

Roy P. Wing was convicted of driving under the influence. It was the defendant's second misdemeanor DUI (with mandatory minimum 20 days to serve). At trial, the defense argued a driver identity issue. The defendant's driving was such that Judge Bill Estelle sentenced him to 12 months with 6 months to serve. ADA Robert Campbell also prosecuted this case for the state.

Eric Saucedo pled to felony assault in the first degree, felony failure to render assistance, and driving under the influence. The victim sustained a broken neck in the collision. The defendant attempted to flee and was tackled by good citizen witnesses. The defendant remains in custody. Sentencing is open in front of Judge Kristiansen on August 7, 2007. The prosecutor was ADA Suzanne Powell.

Scott Gardner is currently on trial for felony eluding, assault in the third degree, driving under the influence, refusal to submit to a chemical test, reckless driving, reckless endangerment, and driving with a revoked license. Gardner led the troopers on a 20 mile pursuit on the Parks Highway. This is ADA Suzanne Powell's case.

ADA Rachel Gernat prosecuted the following cases:

Carl Forrester was sentenced to 24 months, with 18 months suspended, for burglary in the second degree and 12 months, with 12 months suspended, for indecent viewing and ordered to complete a sex offender treatment. Forrester was caught peeping on a woman with whom he had a relationship. He had also helped her with some remodeling of her residence. The victim

saw a person peering out from behind curtains in a space under the stairs. Troopers discovered a hole in the floor that Forrester used to climb into the house from the crawl space to watch the victim.

Shawn Hannah was ordered to pay over \$2,000 in restitution to the victim and his family for his harassment conviction based on sexually grooming the victim while he was at camp.

Tony Katulski was indicted on 5 counts of sexual abuse of a minor in the first degree for his long-term abuse of his step-daughter whom he adopted during the time period of these charges. The victim tried to disclose over a year ago, but Katulski talked her and her mother out of it. The victim finally reported to a school counselor that Katulski has sex with her almost daily. A few days after the investigation commenced, Katulski admitted that the victim was telling the truth and while he was not having sex with her everyday, he can understand why she would feel that way. He admitted it is at least once a week. Katulski is being held on \$75,000 cash plus a third party pending trial. ADA Rachel Gernat is handling the case for the state.

Palmer Grand Juries

ADA Richard Payne prosecuted the following cases:

Alex Headrick, Martin Libby, Errol Keller and Michelle Keller were indicted for misconduct involving a controlled substance in the second degree, and promoting contraband in the first degree. Headrick, Libby and Keller were in maximum segregation at MAT-SU Pretrial and were smuggling Oxycotin by means of liquefying the drug and mixing it with paint. The paint was then used to paint pictures of Shrek, Donkey, Fiona and Puss-N-Boots.

Paul Cline was indicted for arson in the second degree, assault in the third degree and criminal mischief for attempting to run over his wife multiple times before lighting the family home on

fire. The defendant was heard to say that he would be willing to turn himself in once the “fire got going good.”

Colleen Wood and J. Biash were indicted for tampering with physical evidence when they each appeared at the probation office for a urine test with mini-bottles hidden in body cavities. The mini-bottles were filled with urine and capped off with aluminum foil which was pierced with the defendants’ fingers.

Clay Hein was indicted for attempted murder when he fired at least nine mm rounds into an occupied vehicle. The vehicle had nine confirmed entrance points.

SAVE THE DATE

June 19–21, 2007 NAAG Summer Meeting –
Atlanta, Georgia

July 22–25, 2007 CWAG Annual Meeting –
Anaheim, CA